IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.47 OF 2005

Smt.Anjali Bala Palkar. ... Appellant.
Versus.
The Municipal Corporation of
Greater Mumbai. ... Respondents.

Shri A.Y.Sakhare, Sr.Advocate with Shri I.S.Yadav for the Appellant.

Shri J.Xavier for the Respondent No.1.

Ms.Nita Madhyani for the Intervener.

CORAM : ABHAY S. OKA, J.

DATED : 31st January, 2005.

P.C.:

1. The challenge in this Appeal is to the order dated 29th December 2004 passed by the learned trial Judge. By the order impugned, the learned trial Judge rejected the prayer for grant of ad-interim injunction.

2. The challenge in the suit filed by the Appellant in the City Civil Court is to the notice under section 354-A of the Mumbai Municipal Corporation, 1888 dated 16th November 2004 and notice dated 27th December 2004 issued under section 488 of the said Act 1888.

3. The suit structure is admeasuring 10'x30'. Admittedly the suit structure was owned by Peter Jacinto and Rossie Jacinto. The only averment in the suit about the title of the Appellant is that the said original

owners agreed to sell the suit premises along with the plot of land to the Appellant and the Appellant was put in possession of the suit premises. The date of the agreement is not stated in the suit and even a copy of the agreement is not produced along with the suit.

4. In the plaint there are averments to an effort that the predecessor of the Plaintiff had carried out certain minor repairs to the suit structure. The case is that while carrying out minor repairs nothing unauthorised was done. The plaint itself discloses that L.C.Suit No.5401 of 2004 was filed by the predecessors in title of the Appellant for challenging the same notice under section 354-A dated 16th November 2004. It is also stated that the said suit was filed by the Plaintiff as Constituted Attorney of the predecessor-in-title of the Plaintiff. It is pertinent to note here that the said suit has been unconditionally withdrawn. In view of this position, there was no question of the Appellant filing a fresh suit and challenging the same notice under section 354-A and the consequential notice issued under section 488 of the said Act of 1888.

5. In view of this situation I find no fault with the discretionary order passed by the trial Court. Considering the fact that the grant of ad-interim injunction is an equitable relief, the Appellant was not

entitled to the said equitable relief. Hence the Appeal is dismissed with no order as to costs.

Judge.